PROCEDURE IN CRIMINAL COURTS.

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Many good citizens profess to believe that the criticism of our courts is undermining the foundations of our Republic. Such a conclusion is not justified. Ever since the world began, courts have been the most conservative forces in every land. The radicalism of every age has always been overcome by the conservatism of the courts and lawyers.

In 1381 a band of ruffians, led by Watt Tyler, stormed the London Temple which was dedicated to the law, proclaiming that henceforth all lawyers should be barred from the House of Commons, that England might secure simplicity and integrity in the enactment and construction of her laws.

In 1450 Jack Cade inaugurated the "War of Roses" by leading a ragged mob into London to tear down this temple and annihilate the lawyers. The ancient Egyptians forbade advocates to plead in their courts, on the ground that the administration of the law was thereby darkened. Glorious Athens would not tolerate professional lawyers or judges; hence Socrates was tried by a mob of five hundred judges drawn from the rabble, all of whom were eligible to sit in judgment in a criminal cause. The verdict was death, by a vote of 281 for death and 219 for acquittal. This was popular rule. Sir Thomas Moore thought lawyers and courts were an abomination. In his Utopia he said: "They have no lawyers among them, for they consider them as a sort of people whose profession is to disguise matters as well as to wrest laws."

In 1785 placards were posted in New York and Massachusetts threatening with mob violence any lawyer who dared to run for office and any man who dared to cast his vote for a lawyer.

In 1786 hooting mobs, armed with swords, muskets and bludgeons, gathered at Worcester and Concord and prevented the sittings of the courts in regular session. The same year a mob marched upon Springfield, Massachusetts, where the Supreme Court was in session and compelled it to adjourn.

In 1809 the Legislature of New Jersey passed an Act forbidding the citation in court of any case arising outside of New Jersey and

[1] Read before the annual meeting of the Illinois Branch of the American Institute, May, 1912.

making it a misdemeanor for any lawyer to bring into court a law report or text book published in England. The next year, Pennsylvania and Kentucky passed a similar law. Henry Clay, then a member of the Kentucky Legislature, was the only member of that body who voted against it.

A remarkable change has come over us in these later days. Today, the King of England and his Cabinet are lawyers. The Lords and Commons are dominated by the members of that profession. In this country the lawyer is everywhere. His power in controlling the machinery of government is almost supreme. In the legislative, executive and judicial departments he makes, enforces and interprets our laws; instead of an embargo upon his office holding, every position of trust and confidence is open to him and most of them are filled by him; instead of a ban upon English precedent, our American critics direct us to the system of jurisprudence in England as offering a solution for all our troubles. The study of any established system of criminal procedure will lead to a conviction that none has yet been found that is free from serious defects. In this country instead of one established method of procedure we have forty-eight, no two of which are alike. It is well, therefore, in seeking a system which will offer the best results that a study be made of English judicial methods as well as the methods of other nations and of our several States in the hope that we may learn something that will aid us in correcting our own errors. For while all systems are defective, yet there is scarcely one that does not offer some valuable suggestions.

When Japan sought to adopt a system of judicial procedure the Emperor appointed a Commission and directed its members to visit the civilized nations of the World and report their conclusions upon the best plan to be adopted. This was done and the Commission reported in favor of the French judicial code, which was afterwards adopted by the Empire.

The trial of the Camorra in Italy appears grotesque to us, but in its daily word combats between the accuser and the accused the truth is often elicited where our battle of experts would have failed.

Those who have been the most severe in their condemnation of our criminal courts have been the most urgent in directing our attention to the nisi prius criminal courts of England, and it is well that some consideration be given to these courts before we attempt to correct the weakness of our own. It is incorrect to assume that public criticism of courts is confined to our own country. Since the Dreyfuss and

Steinheil trials, a revolution in court methods has occurred in France, due to an insistent demand for reform.

In England, criticism of the trial courts has reached a critical stage. Lord Winston Churchill, Home Secretary, recently stated in a public address:

"Warfare exists between the great hierarchy of the law and the workingmen's guild. England needs some bulwark that will stand between the tradesmen and the courts."

In the Westminister Review of October, 1910, an English law writer says:

"That criminal trials are often conducted and sentences passed by men who are unfit for the part they have to play, can hardly be doubted."

The English Law Journal of June 18, 1910, editorially says:

"The action of the Court of Criminal Appeals in controlling and reversing the decisions of the lower criminal courts is so regular and so salutary that the cause of justice is immensely advanced and the wonder is now that we managed without it."

The same Journal, under date of November, 1911, says editorially:

"If the Court of Criminal Appeals has had no other effect it would have fully justified its existence by demonstrating as it has done that convictions of innocent persons unfortunately are much more frequent in practice than one likes to contemplate."

Recently a member of the House of Lords, in a public address, said:

"Some half dozen years ago one could hardly open a newspaper without reading a speech from some judge who proudly announced to the grand jury that no miscarriage of justice had ever taken place before him, but one no longer reads such speeches. Probably the gentleman who made them in former days has had unpleasant experiences of their fallibility in the Court of Criminal Appeals."

These criticisms show the trend of thought in England. The writer has been unable, however, to find a single criticism in the public press or elsewhere of the new Court of Criminal Appeals. Contrary to the general belief, the weakest point in the English judicial system is the trial of criminal cases. There are today substantially twenty thousand judges, recorders and stipendary magistrates presiding over criminal courts in England. Many of these judicial officers are appointed for political reasons and have neither sufficient learning or experience to make capable and efficient judges. Last year 684,625

cases were tried by courts of summary jurisdiction and summary punishment imposed by these courts. Many of these twenty thousand judges are not lawyers and are without legal training; some of them are preachers and do not know what is or is not competent evidence; yet they arraign the accused, hear the evidence, instruct juries and sentence to prison thousands of men, women and children charged with violating the criminal laws. Their instructions to juries and comments upon the evidence are often ludicrous.

The writer has carefully examined all cases decided by the English Court of Criminal Appeals from October 24, 1910, to February 19, 1912. During this time one hundred and seventy-nine appeals were heard by the court. Every character of crime was involved, from murder to petit larceny. The judgments of the trial court were affirmed in only sixty-eight of the one hundred and seventy-nine cases; the convictions were quashed and the defendants discharged in forty-three cases; the penalties inflicted by the trial court were reduced in sixty-six cases and increased in two cases. In other words, the judgments of the trial court were set aside in sixty-two per cent of the cases appealed. No such an appalling record of errors can be found in any court in the United States. In thirty-six of the forty-three cases in which the judgments of the trial courts were quashed, the court of appeal based its decisions upon the misdirection to the jury by the trial judge. In not over one or two of the reversals were the judgments of the appellate court based upon technical objection to the indictments.

Courts have but one function and that is to insure just and righteous judgments between parties who are not able to settle their own differences. Criminal courts deal with the State on the one hand and offenders against its laws on the other. Both sides have the right to demand that the judgments of the court shall speak the truth in every case. If the accused is guilty he should be so adjudged by the court; if he is innocent, every consideration demands that he be acquitted. It is the final judgment of the court, not the method of arriving at it, that is of vital importance. If the judgment speaks the truth, it should stand; if it is apparent that it does not speak the truth, it should be annulled. The only justification for a court of appeal in criminal cases is the well recognized fact that the judgments of trial courts do not always give expression to the truth; that sometimes the innocent are convicted. So mindful are we of the rights of the individual, as against the State, that our courts of appeal are

never permitted to review that large number of erroneous judgments in which the guilty are declared to be innocent.

The object of a court of review should always be to correct mistakes of judgment in the trial court. If an appellate court can say in any given case that the judgment is correct, it should be affirmed; but if the court has a well-founded belief that the judgment condemns to punish one who is innocent, it should be set aside no matter how it has been reached.

Most of the criticism of our courts lately has been directed against Courts of Appeal. This has been provoked by the failure of these courts, in many instances, to base their decisions upon the guilt or innocence of the accused rather than upon the methods of procedure in the trial court. Many of these critics, in their endeavor to suggest a remedy, have strongly urged upon us the adoption of the English judicial system, where, it is urged, most of the troubles we have experienced have been met. We hear it repeatedly urged that the nisi prius courts in England are much more effective than our courts in suppressing crime and lawlessness. It is urged that this is due in large part to the greater experience and learning of the judges, to the greater freedom of the court in selecting and instructing juries, to the removal of judges from politics and public clamor, to the simpler methods of procedure, and finally, to the absolute certainty with which justice is meted out in every case in the trial court and the infrequency with which these judgments are disturbed by their Court of Appeal.

The English judicial system presents many valuable suggestions for our consideration. There is a solidarity about it that evokes our admiration. The Lord High Chancellor is not only the highest judicial officer of the realm, but he has power to control and direct every judge, clerk, sheriff, bailiff and constable in the Kingdom. Every part of the entire system responds to this centralized authority which has power to promulgate uniform rules of practice and enforce obedience to such rules in all courts, whether of superior or inferior jurisdiction. The English Court of Criminal Appeals is a model for efficiency. It is presided over by three judges who are appointed by the Lord Chief Justice from the seventeen judges who compose the King's Bench. The personnel of the court changes from time to time as the Chief Justice may direct. The court is in session as a criminal court as long as any business remains to be done. When this work is accomplished, the judges resume their duties as judges of the King's Bench. In the six hundred criminal cases that have been before that court since its

creation in May, 1908, the average time that elapsed between the date of the conviction and the final disposition in the Court of Appeal, is less than four weeks. If one accused of crime is convicted and desires to have his cause reviewed by the Court of Appeal, he at once prays an appeal, which, if granted by the trial court, requires him to go at once before the reviewing court and there, either in person or by counsel, to urge the grounds of his appeal. There is no delay incident to the preparation of a record. The original record is taken physically before the Court of Appeal, which immediately hears and disposes of the cause. If the appeal is urged on the ground of newly discovered evidence, the appellate court immediately proceeds to hear such further evidence. If the ground of appeal is that the defendant is not guilty, the court immediately passes upon that question, oftentimes calling the appellant before it and questioning him in open court touching his guilt or innocence. If the appeal is urged on the ground that the penalty inflicted is excessive, the court may reduce the penalty. If, however, the court after hearing the accused, is of the opinion that the penalty inflicted is too light, the court has the power to increase the penalty, and it not infrequently exercises such power.

The aim of the court in all cases is to correct, as nearly as possible, the mistakes of the trial court. The result of this practice has been to bring about a standardization of penalties. An accused will not take the chances of an appeal unless he believes he has a meritorious cause when he understands that the court has the power to increase his penalty.

The sittings of this Court of Criminal Appeals are more or less informal. The presumption of innocence that obtains before conviction does not prevail in the Court of Appeal. Here the accused is required to submit himself to oral examination by the members of the court. Counsel on both sides are permitted to present any question they see fit touching the guilt or innocence of the accused. Usually the opinion of the court is expressed orally by a member of the court before the adjournment upon the day the appeal is argued. This opinion is taken down in shorthand and later filed as the opinion of the entire court. These opinions are models of brevity. The judges of the court do not think it necessary to bolster up their decisions by the citation of a long list of authorities, and seldom is an authority quoted.

Two or three such opinions might not be out of place in this paper. On October 6, 1911, Christopher Stokes, a porter, was convicted at the Quarter Sessions of having stolen a satchel from a gentleman staying at a hotel. He was sentenced by Lord Coleridge to six months' im-

prisonment at hard labor. He appealed, and on October 30th obtained a hearing in the Court of Appeal. At that time a waitress of the hotel testified that she had seen the porter carry a similar bag on many previous occasions and had also seen a man answering the description of the porter take a similar bag from the hotel upon the day in question. This additional evidence was heard by the Court of Appeal, whereupon Mr. Justice Darling stated the opinion of the court in the following language:

"In view of the fresh evidence, the conviction is too doubtful to stand; the onus was on the appellant to prove that he did not steal, and having regard to all the facts, the verdict cannot be supported. Under S. 4 of the Criminal Appeal Act, 'the appeal shall be allowed if the court thinks that the verdict cannot be supported, having regard to the evidence.' Evidence there means all the evidence, including the further evidence called for the first time before the Court of Criminal Appeal. The conviction must therefore be quashed."

Solomon Zausner was convicted in Quarter Sessions on October 6th, of stealing a watch and sentenced to six months' hard labor and recommended for expulsion under the Aliens Act. He was a Russian subject. He appeared before the Court of Criminal Appeal on October 30th, in person, and told the court that this was his first offense, that he had a wife and three children, that he had been ten years in England, that he was a Russian subject, and that if he was sent back to Russia he would be shot for having deserted the army in Manchuria. The court thereupon at once rendered the following opinion:

"Enquiries have been made, and it has been ascertained that the appellant would not be shot if he were deported to Russia. But it is probable that he would be punished for desertion. Having regard to all the circumstances, we think that it is not a case in which it is advisable to inflict the penalty for expulsion. So much of the sentence as recommends expulsion will be quashed, and the sentence of six months' hard labor will run as from the date of conviction."

Frederick Bradford was convicted at Quarter Sessions on October 7th of malicious damage to property and sentenced to four months' imprisonment with hard labor. He was under sixteen years of age and was convicted of having thrown a stone at a Chinese laundry and broken a window. He appealed, and his case was heard on October 30, 1911, before the Court of Appeal, the boy being present in court. Mr. Justice Hamilton rendered the following opinion:

"This sentence cannot stand. The Sections of the Children Act applicable to this case were not brought to the notice of the Recorder, and he passed a sentence which he had no power to inflict. The maximum sentence which could have been imposed under S. 106 of the Children Act was a month's detention and as the appellant has already been in prison for three weeks, the court thinks

it unnecessary to substitute the formal sentence which might have been passed, and orders the appellant's liberation from custody."

If our Courts of Appeal would always require the parties or their counsel to appear before the court upon the call of the cases and urge the specific ground of appeal, and these courts, after hearing the arguments and such further evidence as might be offered, would at once render their decisions in the simple and common phrases characteristic of the foregoing opinions, there would be much less outcry against long delayed justice in this state.

Contrary to the common belief, the weakest place in the entire English judicial system is its nisi prius criminal courts. It is not true that these courts are less influenced by public or political clamour than are our American courts. During the recent strikes in London, many rioters were arrested. When arraigned for trial, a mob of two thousand people, headed by the leaders of labor organizations, paraded up and down the streets in front of the court building, threatening and condemning the courts and the police. The Home Secretary's office, becoming alarmed, directed the crown prosecutors to drop the prosecution. The prisoners were released, left the courtroom, and took their places at the head of the procession, where they marched with floating banners through the principal streets of London. In order that young King George might show that he was a good fellow and a genuine friend of the people, he pardoned 11,873 prisoners on the day of his accession to the throne.

The militant suffragettes have defied the court and officers of the realm. They have congregated in front of the homes of members of Parliament and of the Cabinet, hurled stones and missiles through their windows, and otherwise heaped indignities upon public officers, which would not be tolerated in the most abandoned communities in this country. The government has apparently been paralyzed at times and prosecuting officers have almost wholly failed to perform their duties under grave circumstances. So often during the last two or three years has the Home Secretary's office interfered with crown prosecutors in the discharge of their sworn duties, that a serious controversy has arisen as to the right of this high government official to thus meddle with the work of the courts. During the recent labor strike, Judge Rentoul then sitting in the Criminal Courts in London, attended and addressed a mass meeting of strikers; the closing words of his speech were as follows:

"I hope to see you all again, and I want to give you a word of earnest advice. When you are in the docks at the Old Bailey, do not

pretend to know me, but pass up the words 'North Paddington,' and I will do the best I can for you."

In the recent Harvey Crippen trial at the Old Bailey, which assumed international importance, Lord Alverstone, Chief Justice of England, so far forgot the dignity of that high office that he stepped down from the King's Bench, over which he presided, to the famous old police court, that he might preside in a case that was then attracting the attention of the civilized world. No apparent excuse was offered for this remarkable step. No reason is urged why one of the twenty thousand judges, recorders and magistrates, who usually sit in such trials, could not have presided with as great dignity and learning as the Lord Chief Justice himself. In an examination of the records of the criminal trials in England in the last few years I have found no similar incident; murder cases are tried as other cases, by nisi prius judges, who are assigned to the various courts by the Lord Chief Justice for that particular work. Not only did Lord Alverstone thus seemingly yield to the desire for public applause, but while presiding in this now famous case, he permitted artists and photographers to be present to sketch and snapshot the judge, the jury, and the array of splendidly attired theatrical ladies, who sat by his side upon the Bench. These pictures were published in the daily papers from day to day during the trial. The Law Journal published in London during the week of the trial, said:

"It is unfortunate that the arrangements made for the admission of the public to the court of the Old Bailey were so incompatible with the solemnity of the proceedings. The issue of half-day tickets to fashionably attired ladies tended to give an unpleasant theatrical tone to the audience, a tendency which was not lessened by the presence of not a few actors and actresses throughout the trial, and what is justly objected to, is that many of these elegantly gowned ladies were accommodated with seats on the Bench. It is to be hoped that some measures will be taken to prevent the morbid curiosiy of 'smart pople' from reducing the trials at the Old Bailey to a level of melodramatic theatrical."

During this trial, the bar of the Old Bailey met and passed resolutions denouncing the management of the trial because the seats in the court-room, which had always been reserved for the bar, had all been taken by the friends of the judge and officers of the Crown, to whom half-day tickets had been issued.

The Law Journal of September 17, 1910, says:

"It has become a common thing for prisoners to be photographed

in the dock. The Jockey Club of London recently prohibited the camera and snapshot at all races, but apparently the courts have not made the same progress."

Harvey Crippen was an American doctor who was charged with murdering his wife. In all probability he deserved his summary fate; but if so, to have had the Lord Chief Justice of England, the dazzling array of fashionable ladies of the realm, and the theatrical stars of the great metropolis of the world, sit smiling and frowning upon him while he was being condemned to death, was a crown of glory greater than he deserved.

A recent American visitor to an English criminal trial, said with apparent approval:

"The judge in his charge to the jury was more severe in his arraignment of the defendant than was the Crown prosecutor."

While this language was not spoken of Lord Alverstone in the Crippen case, yet one has only to read his charge to the jury to realize that the statement would be perfectly true in this instance. Immediately upon the return of a verdict of guilty, the great Lord Chief Justice put on the black cap and sentenced the prisoner to death, within three weeks, with the remark, "May the Lord have mercy upon your soul." He thereupon at once proceeded to the trial of the defendant's guilty associate, Miss Le Vene, a beautiful stenographer and budding actress, who lived with Crippen, in his home, while the body of his murdered wife was rotting in the cellar, and who, dressed in man's attire, fled with him toward America, and was captured with him on board the vessel and returned to England for trial. But the great Lord Chief Justice, with a smile and a wave of the hand, directed the jury at once to find the defendant not guilty. Crippen thus summarily convicted, immediately prayed an appeal to the Court of Criminal Appeals. Great, however, was his chagrin when he found that the three judges composing that court were Lords Darling, Pitford and Channell, all of the King's Bench, and all of whom had been appointed to the appellate bench by the same Lord Chief Justice Alverstone who had just condemned him to death and that the same judges could be removed from that bench at any time by the word of the same Chief Justice.

Who would regard with complacency the descent of our grave and learned Chief Justice Edward White from his exalted post at the head of the Supreme Court at Washington for the purpose of trying some notorious criminal at the old Harrison Street Court in Chicago?

Recently three judges of the King's Bench who receive an annual

salary of thirty thousand dollars and whose time is mostly devoted to hearing appellate cases of great importance, were found to be engaged in trying sensational theatrical cases in London. One case was that of a prominent actress arrested for wearing an enormous hat at a matinee performance; another was a legal fight over a stage bloodhound; a third had to do with the ape, "Consul." Consul was claimed by his owners to be possessed of human intelligence and more than ordinary ape accomplishments. One of these accomplishments was the ability to sign his own name to a contract. He had executed in his own name a contract with a certain music hall to perform at three hundred dollars per week. The contract was broken and the great legal question over which the King's Bench wrestled for days was whether or not a contract signed by an ape in his own name could have any binding force.

Space will not permit of a discussion of the many grave and serious weaknesses in the trial of English criminal cases; but an examination of the reports of their Court of Appeal will convince any reader that the argument often advanced that the great time saved by the English courts in securing juries without any examination whatever as to their prejudice or their fitness to preside in any given case, is not one that will commend itself. The reversal of criminal cases by the English Court of Criminal Appeals has shown that jurors must not be mere puppets in the hands of the court, but must be men without bias and capable of understanding the ordinary rules applicable to the trial of criminal cases. This point is nicely illustrated in the very recent case of Rex V. Alexander, tried in London on January 4, 1912, and heard in the Court of Appeal on January 25th of this year. In this case, Alexander was charged with having abducted a girl and when placed upon trial before Judge Rentoul pleaded not guilty. After the evidence had been heard, the judge began (what he called) a direction to the jury. It was, however, a bitter denunciation of the defendant. So bitter and convincing were his words to the jury that the defendant himself became convinced that he was guilty and rose in court and stated that after hearing the judge's learned argument was convinced that he was guilty and desired to change his plea from not guilty to one of guilty. Thereupon the jury rendered its verdict of guilty and the judge sentenced him to two years at hard labor. He asked for an appeal, which was granted, and upon a hearing before the Court of Criminal Appeals, that court said that Alexander not only was not guilty of the offence charged but that he deserved to be commended for his kindly treatment of the girl.

A large number of the forty-three cases decided by the Court of Criminal Appeals during the last year wherein the court quashed the conviction and set the prisoner free, the defendant was held to be innocent in fact. Most of these erroneous convictions were due to a wilful or ignorant misstatement of the facts by the judges in their charges to juries. It is not wise to give to trial judges the unlimited power to comment upon the facts. It is this power of English judges that has sent and is sending a considerable number of innocent men and women to prison. The power of the judge to express an opinion upon the weight of the evidence may well be reposed in judges who are free from the power of governmental influences on the one hand, and political, social or other consideration upon the other. But the judge is too prone to impose his own opinions upon the jury and thereby force of argument impel verdicts, often cruelly unjust.

It is not in the interest of justice that no preliminary examination be made of prospective jurors before they are permitted to sit in judgment upon one who is charged with a serious offence where grave consequence to him and his family may result. No one would select a coachman to handle his horses, or a servant to care for his home, without some examination as to the fitness of the person selected. How absurd it is to say that you may select at random twelve men from any walk in life without a word of inquiry as to their fitness, place them in the jury box to pass upon the lives and liberties of citizens and expect just and sane verdicts. A judge should be given the power to restrain within proper limits the examination of jurors, or he should examine them himself with great care, and courts of appeal should be slow in basing reversals upon restrains of counsel by the trial judge. Too much time, however, elapses between the trial of a criminal cause and its final disposition in a court of appeal. We can well afford to adopt the English system in this regard and require an appeal to be taken at once without waiting for the long preparation of a record, or for the beginning of a term of court. The original record should be certified by the trial court to the court of appeal so that no delay would result. Criminal cases should be disposed of in courts of appeal within a period of not more than three or four weeks from the time conviction is had. It is the quick and summary punishment that is effective. Punishment long delayed in criminal cases is justly the subject of severe condemnation.

In Chicago misdemeanors are tried and summarily disposed of by the Municipal Court within one week from the time the charge is made. A writ of error, however, may be sued out of the Appellate

Court for the First District and by filing a bond the cause delayed for from two to three years. At the present time in the neighborhood of one hundred and fifty such criminal cases are pending in the Appellate Court of the First District. The guilty defendants are at large in our streets, many of them continuing the crimes for which they were convicted. This is an intolerable condition. The Supreme Court of this State should at once designate one of the four branches of the Appellate Court of this District as a criminal branch and direct that this court sit continuously until all criminal cases are disposed of. It should provide that hereafter when a conviction occurs and a review is desired by the defendant, he shall at once go before this branch of the Appellate Court and have an immediate hearing. This branch of the court should be continuously in session, except during two months of the summer season, and be ready upon any day to hear such criminal matters as may be presented. The same rule should apply, in part, to all other courts of appeal that have jurisdiction in criminal cases. The demand of society for protection against the criminal on the one hand, and the demand of the individual who may be wrongfully convicted on the other hand, makes it imperative that these cases should be heard before cases which involve merely the right of property between individuals.

The writer is strongly of the opinion that all Appellate Courts should be given the power to summon before them convicted persons for examination and further inquiry, and that wherever a new trial is sought on the ground of newly discovered evidence, the appellate court shall at once, if a reasonable showing is made, hear such evidence. Our Supreme Courts and Courts of Appeal should be given the power to raise or reduce the penalties inflicted. It will not often occur that the penalty should be increased; but a guilty offender knowing that the court has the power and will exercise it in a proper case will be slow to clog the court with his appeal.

It has long been recognized in this State that punishments for offences are most unequal. These depend in large measure upon the whim of a particular judge or jury. One judge may have strong aversion for a certain class of offenders, while another will give scant consideration to such violators. In this country we have no standard of penalties. The English Court of Criminal Appeals has brought about a most satisfactory standardization of penalties. That court has found it necessary in almost one-third of its cases to reduce the penalty inflicted by the trial court and to increase the penalty in other cases. No good reason exists why our courts of appeal should not have the

same power and why such power wisely exercised would not be of great advantage to the cause of justice.

It has so frequently been urged in this State that the Grand Jury should be abolished and felonies tried upon information rather than upon indictment, that it seems hardly worth while to discuss the question. There is not the slightest doubt in the mind of the writer that more than one-half of the failure of our courts in suppressing crime is due to our adherence to that relic of Star Chamber days—the grand jury. Why should it be necessary for judges trained in the law to sit for days and listen to evidence presented at preliminary hearings both for the prosecution and the defense and then, if probable cause is found, to hold the accused to a body of men who know no law and have no understanding of the rules of evidence? It is hard to understand why an indictment once voted cannot be amended after the adjournment of the Grand Jury. From an instrument of justice, the Grand Jury has today become a convenient cover to hide the responsibility of the State's Attorney and often a convenient instrument in the hands of unscrupulous persons to punish their enemies or reward their friends.

In the year 1909, the judges of the Municipal Court of Chicago, after hearing the evidence both for the prosecution and the defense, held 2,249 persons to the Grand Jury. That jury, after hearing only the evidence for the prosecution, discharged 798 of this number. The record of 1909 was duplicated in 1910 and 1911. Seven hundred and ninety-eight persons found guilty by the judges of the Municipal Court of having committed felonies in the City of Chicago in one year, were turned loose to prey upon the community by the Grand Jury! The State's Attorney is able to shift his responsibility as a prosecuting officer upon the shoulders of a body of men who are responsible to no one. This is an appalling record and illustrates the helplessness of the courts in ridding the community of its outlaws.

Many of the states have gone on record in the last few years as opposed to the grand jury system. The following states either have no grand juries or summon them at infrequent intervals: Wisconsin, Vermont, Colorado, Missouri, Wyoming, Oklahoma, Utah, South Dakota, North Dakota, Nebraska, Idaho, Kansas and Michigan. In these states, felonies and misdemeanors are tried upon information and not upon indictment. In Oregon, where progressive legislation is rampant, the Legislature, in 1908, changed the method of presentation in criminal cases from information to indictment and forbade judges to instruct the juries orally. I do not believe that in instructing juries

judges should have the power to express an opinion as to the weight of the evidence, but do believe that they should have the power to instruct juries orally, and that exceptions to such instructions should be preserved only when taken in court before the jury has retired from the bar. This is substantially the practice today in the following states: Massachusetts, Rhode Island, South Carolina, Louisiana, Pennsylvania, Connecticut, Delaware, Wisconsin, Ohio, Maine, North Carolina, New Jersey, Vermont, South Dakota, North Dakota, New Hampshire, New York and Michigan. In some other states, the court may instruct the jury orally unless requested by the parties to instruct in writing.

There are fundamental defects in the criminal laws of this State which should be remedied by legislative enactment. Foremost among these is the abolition of the ancient and absurd distinction between felonies and misdemeanors. A felony in this State is declared to be an offense punishable by death or imprisonment in the penitentiary. At common law a felony was a crime so debasing in character that he who committed it forfeited not only his lands and tenements but his political rights; his wife forfeited her dower, his blood was corrupted and his children to the second and third generations were declared to be base and ignoble. Misdemeanors were all other crimes.

A law fails whenever the reason for it fails. The forfeiture of lands and tenements as a penalty for crimes has been prohibited for more than a century, except in the case of treason. Blood attainder lives only in history. Notwithstanding these changes, our criminal laws recognize this ancient distinction between felonies and misdemeanors. The distinction, however, is not based today upon the character of the crime but upon the penalty inflicted. If the crime in Illinois is one which carries with it the penalty of death or a term in the penitentiary, it is a felony. If its punishment is by fine or imprisonment otherwise than in the penitentiary, it is a misdemeanor. Many misdemeanors in Illinois are more grave and ignoble in character than some of the felonies. Next to the crime of murder there is none more base than that of pandering; yet the extreme penalty for the first conviction under this charge is imprisonment in the county jail or house of correction for a period of not less than six months nor more than one year and by a fine of not less than three hundred dollars and not to exceed one thousand dollars. It is a far more serious crime in Illinois to steal sixteen dollars of your money than it is to steal your daughter and consign her to a den of harlots.

One of the most common offences in this state is that of obtaining

money or goods by false pretenses. It frequently occurs that shrewd and unscrupulous persons are able, through cunning argument, to obtain hundreds and often thousands of dollars from unwary persons through the medium of worthless stocks, lands, and other devices. Yet the penalty for such conduct is a fine not exceeding two thousand dollars and imprisonment in the County Jail not exceeding one year. Great combinations of capital are formed by unscrupulous men, competition throttled and millions of dollars forced from a helpless public, yet the penalty provided by the Statute of Illinois for this offence is a fine of not less than two hundred dollars nor more than one thousand dollars, or imprisonment in the County Jail not to exceed one year, or both.

The law-makers of this State have been over-solicitious in guarding our citizens from the small pilferer and embezzler but have failed to protect them against the shrewd and cunning crook. It has been safe for the compounder of poisonous foods to destroy the health of entire communities by selling their noxious compositions. A conviction for the fraudulent adulteration of bread or the sale of diseased meat in this state carries with it a fine of not to exceed one thousand dollars and an imprisonment in the County Jail not to exceed one year. In more recent years, great effort has been made to place the physical and moral well-being of the child above any consideration of money or property; yet in Illinois the man or woman who deliberately leads astray the child, by contributing in innumerable ways to its delinquency, is subject only to a fine of two hundred dollars, or imprisonment in the County Jail for not more than twelve months, or both.

Since 1845, the Statutes of Illinois have declared the following crimes to be infamous: Murder, rape, kidnapping, wilful and corrupt perjury, or subornation of perjury, arson, burglary, robbery, sodomy, or other crime against nature, incest, forgery, counterfeiting, bigamy and larceny. By an amendment to this act in 1911, it was provided that larceny should only be infamous when the punishment therefor was by imprisonment in the penitentiary.

It is hard to understand why an enlightened community should say that larceny and counterfeiting should be infamous and that pandering and contributing to the delinquency of children should not. An infamous crime under the Fifth Amendment to the Constitution was a crime that involved the charge of falsehood and which injuriously affected the public administration of justice. It was recognized as a crime which involved moral turpitude and imported such depravity in the perpetrator as to render him incompetent as a wit-

ness. The classification was not based upon the severity of the punishment, but upon the nature of the crime itself. No such meaning attaches to the term "infamous" under the laws of this State. Our legislature has arbitrarily included in this classification certain offences which bear no relation whatever to the original meaning of the word. It is a well recognized fact that a custom has long existed in this State of pardoning all convicts upon the expiration of their terms in the penitentiary in order that they may be restored to all the rights of citizens. The law making certain crimes infamous is not only a perversion of the common law, but it is a dead letter and but a stumbling block in the administration of justice. In the recent case of People v. Russell, 236 Ill., 612, a girl was convicted of having stolen fourteen dollars. Our Supreme Court, while recognizing that the offence was petit larceny and the penalty inflicted was a fine and imprisonment otherwise than in the penitentiary, yet reversed the cause on the ground that petit larceny was an infamous crime. The result was that an established practice of fifty years was overthrown and county courts and the Municipal Court of Chicago were deprived of jurisdiction in the thousands of small cases that heretofore had been summarily disposed of, and were obliged to hold such offenders to the Grand Jury, thousands of whom were compelled to lie in prison for varying periods of time before they were given an opportunity to be heard upon the question of their guilt or innocence.

It is absurd to say that one who under the stress of untoward circumstances steals from a department store or other place, five, ten or fifteen dollars' worth of goods is infamous while no such stigma attaches to the corrupter of children and the debaucher of innocent girls! There is no good reason why this statute should be retained.

These artificial classifications of crimes should be abolished and penalties inflicted according to the gravity of the offence. It is absurd to say that one charged with forgery must be indicted before trial, while one charged with pandering may be tried upon information! Or that one charged with larceny of more than fifteen dollars must be indicted, while one charged with contributing to the delinquency of children may be tried upon information! There is no logical ground for these distinctions. The last twenty-five years has witnessed a great change in the attitude of the public towards anti-social crimes. More consideration is given today than ever before to the prevention of crimes, and particularly such crimes as contribute to the moral and physical delinquency of the race. Our law-makers have not kept pace with public sentiment along this line.

In 1833, the Legislature declared that the theft of five dollars or less was petit larceny. In 1867, the theft of twenty-five dollars or less was made petit larceny. The same Legislature, however, amended the law so as to make the theft of fifteen dollars or less petit larceny. Thus it has remained ever since. Fifteen dollars in 1867 was equal in purchasing power to fifty dollars today. The temptations to depart from the paths of rectitude have multiplied one hundred fold.

It is well recognized by those who have had any experience with the Criminal Court of this State that for twenty-five years the judges and state's attorneys have allowed persons arrested charged with having stolen property of the value of from one to one hundred dollars to plead guilty to petit larceny in order that slight but summary punishment might be inflicted. This has been done in open violation of the letter of the law by substantially all the courts of the state. It is of the utmost importance, therefore, that the law concerning larceny should be so amended that the line between grand and petit larceny should be fixed at not less than one hundred dollars.

Such legislation is urged as will effectuate the following changes in the criminal laws of this state:

First: The abolition of the Grand Jury.

Second: The designation of certain appellate courts as courts for criminal appeals whose duty it shall be to remain in continuous session until all appeals are disposed of.

Third: Instructions to juries should be oral and exceptions should be allowed only when objection is made and exception taken before the jury has retired from the bar.

Fourth: Some method should be provided by which the original record of the trial court may be transferred at once to the court of criminal appeals.

Fifth: All courts of criminal appeals should have the right to summon and hear the evidence of additional witnesses, when newly discovered evidence is urged as the ground of appeal.

Sixth: Courts of criminal appeals should have the right to compel the presence of appellant and his counsel upon the call of the calendar, to examine appellant under oath if desired and to require his counsel to state the points relied upon to sustain the appeal.

Seventh: Such courts of appeal should announce in court at the close of the hearing, if they choose to do so, their decision and the reasons which led to it. Such reasons so stated should be taken down in shorthand and when afterwards revised by the court, filed as the written opinion of the court.

Eighth: Opinions should be very short.

Ninth: The distinction between felonies and misdemeanors should be abolished.

Tenth: Section 279 of Chapter 38 defining infamous crimes should be repealed.

Eleventh: The line between petit and grand larceny should be raised from fifteen dollars to one hundred dollars.